

MT LEGISLATIVE HISTORY

Chapter 292 1974

Bill (H) 1099 S _____

Original bill & hist. C

H. Committee on Labor & Employment Relations

S. Committee on Labor & Employment Relations

Hearing Date(s) Jan 30 ☒ C

Hearing Date(s) Mar 04 ☒ C

Feb 18 ☒ C

Mar 06 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 18 ☒ C

Mar 06 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

three-day weekend. Mr. Dale Skaalure, Montana Association of County Commissioners, said adoption of this bill would make the maximum use of equipment possible, and the flexibility it offers counties is important. It will decrease costs and provide better service to the county.

OPPOSITION: Mr. Ernie Post, AFL-CIO, said there is a constitutional provision for an 8-hour day, and this may be changed to promote the general welfare of the people, but this bill is not for their general welfare. The bill does not mention paying these employees overtime. He said the gas that may be saved will not be saved at all because it will be used for recreation. Mr. Joe Crosswhite, Montana Operators Union, said that with the extension of hours, the employees would be working in the dark and would not be working "safely", and he questioned the three-day weekends as to what happens when mishaps occur on Fridays, etc. Mr. George Hammond, AFCEM, said the county employees he represents do not want the 10-hour day. Rep. Aageson closed by saying that this bill would apply to the summer months, and that we should give the people in the county the opportunity to have this kind of flexibility. Questions. Rep. Turner asked Mr. Post what the article was concerning the 8-hour day; Mr. Post replied that it was Article 12, Section 2. Rep. Aageson said that there have been accidents which have occurred because jobs were left when they were almost finished. Chairman McKittrick had questions concerning the grammar in the amendments because it was vague and confusing; Rep. Aageson said he would be open to change.

HOUSE BILL #1099 -- SPONSOR: Rep. Bob Lee. He said this bill amends sections relating to the payment of Workmen's Compensation benefits for temporary and permanent disability and death, and it reinstates language that was eliminated pertaining to the social security offset. Mr. Jim Murry, AFL-CIO, said this was in a package of bills that was passed last year, and he had testified for it because claimants were only entitled to a certain amount of benefits from social security and Workmen's Compensation, and they couldn't go above that. Workmen's Compensation benefits were raised, and the premium cost to the employer was raised, but the social security benefits were reduced under this act. He said Montana is the only state that offsets in death benefits, but the new section strikes that. He added that social security violates the benefits that the employer pays, and that Workmen's Compensation cost is structured to discourage accidents because Montana has one of the highest industrial death rates in the nation. Mr. Larry Zanto, WC administrator, said that if the social security offset is removed, there will be \$1.6 million incurred additional liability, but it does not mean that the state will put out that much; for disability, the incurred liability will be \$2 million.

OPPOSITION: Mr. Bill Romine, Montana Mining Association, said they were opposed because of the net result: the employers' workmens compensation contributions will have to increase. Miners cannot pass the cost of production onto the public because their product price is set nationally or worldwide. Mr. Romine said the miner is now paying \$23.60 per \$100 in wages, and with this bill, that amount will double. Mr. Bill Kirkpatrick, Montana Wood Products Association, said that the wood product industry is very hazardous and any rate increase will add a heavy burden. Mr. McDonald, Anaconda Co., and Mr. George Wood, advisory board, were also opposed. Mr. Zanto said this bill is not an advisory council bill. Rep. Turner asked for a fiscal note on this, and Mr. Zanto will obtain one.

William L. Romano

House BILL No. 1099

ADDRESS 639 Peoria

DATE 1-30-74

Helena, Montana

WHOM DO YOU REPRESENT? Montana Mining Association

SUPPORT? _____ OPPOSE? ☒ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

The Montana Mining Association opposes House Bill 1099 because the net result will be that the employers workmens compensation contributions or payments will have to increase. The small and medium size miner cannot pass this increase on to the public, as can most businesses and industries. Most businesses determine how much it costs them to produce a product, including labor costs, material, taxes, assessments, etc., and then add to that figure the amount of profit it desires, and that becomes its selling price.

Unfortunately the small and medium size miner cannot do this. Sure, he can figure out his costs of producing or mining his product, but he cannot set his own price. The price of most metals are set on a worldwide or nationwide market. The miner must sell his product at that price.

Each time the Legislature adds a tax, or increases the miners contribution payments, such as in the workmens compensation field, the miner's profit shrinks. When his profit finally reaches the point where he has none, and it costs him more to produce his product than he gets when he sells it, he must go out of business.

This point is being reached. The miner is now paying \$23.60 per \$100.00 in wages as workmens compensation payments at this time. House Bill 1099 will add to this. Slowly but surely, just as the proverbial camel, you are breaking the back of the miner, one straw at a time.

1099-
WITNESS STATEMENT

Name WM KIRKPATRICK Date Jan 30th
 Address MISSOULA Support ? ☐
 Representing MONTANA WOOD PRODUCTS ASSN Oppose ? ☒
 Which Bill ? HB 1099 Amend ? ☐
 Comments:

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name George Woods Date 1-30-72
Address Missoula Mont. Support ? ☐
Representing Montana Self Insurers Assoc Oppose ? ☒
Which Bill ? HB 1099 Amend ? ☐
Comments:

Please leave prepared statement with the committee secretary.

February 18, 1974

LABOR AND EMPLOYMENT RELATIONS COMMITTEE:

A meeting of the Labor and Employment Relations Committee was held on Monday, February 18, 1974, at 11:00 a.m. in Room 428A with Chairman Pat McKittrick presiding. All members were present, except Rep. Colberg, who was absent.

This was an executive meeting to discuss HOUSE BILL #1099.

Mr. Larry Zanto, Workmen's Compensation Division administrator, and Mr. Peter Strizich, Insurance Fund Bureau, Dept. of Labor, were present to answer questions concerning HB #1099.

It was suggested that the ~~stricken~~ language on page 2 in sections 1 and 2 be reinserted into the bill. One problem the committee has had with this bill is making it effective July 1, 1973. It will not affect those widows whose benefits have been offset, but there is a constitutional problem with making it retroactive. It was suggested that a severability clause be added to the bill. The addition of this clause would save the bill if there were problems concerning the retroactivity provision.

The committee went through the amendments:

1. Delete the figures "92.701.1" from the bill.
2. Delete "TEMPORARY TOTAL DISABILITY" from the title on lines 8 and 9.
3. Delete the word "DELETING" and insert "ADJUSTING" in the title on page 1, line 10.
4. Delete all of Section 1, and renumber the subsequent sections to conform numerically.
5. Reinsert stricken language on lines 3 to 8 on page 2 by adding it to Section 2.

These amendments were adopted by the committee.

Rep. Lee moved to amend the bill by adding a new Section 3, which would state that this act would be retroactive to July 1, 1973, and a new Section 4, which would be the severability clause. Rep. Turner was opposed to these amendments because he felt that the retroactivity section would set a precedence and would kill the bill. Rep. Lee replied that he was trying to correct the law that was passed last year, which was in error. Motion to adopt the amendments failed with Reps. Baeth, Hodges, Lee, Lombardi, and Turman voting yes; and Reps. Bennetts, East, Ellerd, Flynn, Kimble, Tierney, and Turner voting no.

Rep. Baeth then moved that HOUSE BILL #1099 AS AMENDED DO PASS; Rep. Tierney seconded. Motion carried.

Meeting was adjourned.

Pat McKittrick
Pat McKittrick, Chairman

Bess Wong
Bess Wong, Secretary

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 4, 1974

The meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius on the above date in Room 402 of the State Capitol Building at 8:30 a.m.

ROLL CALL: All members of the committee were present with Senator Bennett absent.

CONSIDERATION OF HOUSE BILL 1099: Representative Lynch, co-sponsor of the bill appeared before the committee in support of this bill. He stated that it is more or less to clean up some of the problems that they are having in workmen's compensation.

Larry Zanto, Administrator of the Workmen's Compensation Division also appeared in support of HB 1099. This bill reduces the offset of total permanent disability from 100% to 50%.

Jim Murray of the AFL-CIO also supported 1099. The injuries under total permanent disability are very low so the cost would not be too great.

Senator Lowe asked how many are under this program as of now. Mr. Zanto stated around 15 to 20 but we only pick up 2 or 3 a year.

Mr. Pete Strizich of the Workmen's Compensation Division explained some of the figures which he had submitted. This would not be retroactive but would only be for future cases. The effective date would have to be July 1, 1974, because the rates have already been figured for a complete year.

Senator Bertsche moved that action on this bill be deferred until Wednesday, seconded by Senator Shea. More figures are needed in order to understand what is going on.

DISPOSITION OF HOUSE BILL 991: Senator Bertsche moved that HB 991 BE CONCURRED IN, seconded by Senator Jensen. MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 1040: Senator Bertsche moved that the amendment on page 4, lines 3 through 8 by deleting the material therein in its entirety, be adopted, seconded by Senator Jensen. MOTION CARRIED UNANIMOUSLY. Senator Jensen moved that HB 1040 BE CONCURRED IN AS AMENDED, seconded by Senator Keenan, MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 782:

Senator Moore had to leave the meeting and left his vote to be the same as Senator Lowe. Senator McNamer had to be excused and left his vote against #782.

Mr. Post suggested an amendment on page 1, line 19 after the words "may not" by inserting the word "knowingly". He also stated that the Chamber of Commerce wanted to make an amendment concerning professional pickets, however, they were not at the meeting.

ROLL CALL

LABOR AND EMPLOYMENT COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date 3/4/74

NAME	PRESENT	ABSENT	EXCUSED
Jensen, Art	/		
Bertsche, Bill	/		
Flynn, Elmer	/		
Keenan, P.J.	/		
Shea, Jimmy	/		
Bennett, George	/		
Himsl, Matt	/		
Lowe, Bill	/		
Moore, Jim	/		
McNamer, William	/		
Siderius, George	/		

DATE 3/4/22

COMMITTEE ON

BILL NO.

VISITOR'S REGISTER

[illegible]

The following examples will serve to illustrate the advantages of maintaining the 50% offset against Social Security Benefits in both the total temporary and total permanent disability sections.

Effective January 1, 1973, the Social Security Act was changed in that the worker's full earnings, including any amounts above the maximum creditable is figured, instead of just the average monthly wage on which the disability benefit was based. With this change, the disabled person can receive a greater amount before the Social Security Administration will apply their offset. The Social Security offset was applicable only if the state does not have an offset provision.

Considering the past benefits payable under the Workmen's Compensation Act, the disabled person received less money with the offset than without. However, the recently enacted changes in the benefits payable under the Workmen's Compensation Act now make the opposite true.

The examples contained herein are taken from actual cases presently being offset by the Division of Workmen's Compensation.

This 37 year old disabled person, with five dependents, was earning \$203.00 per week at the time of his injury. The benefits granted by the Social Security Administration were based on an average yearly creditable income of approximately \$6,000.00 per year. This disabled person and his family receive a total of \$405.60 per month, which resolves itself to \$93.60 per week, 50% of which equals \$46.80 per week, the amount of the Workmen's Compensation Division's offset.

Without a Workmen's Compensation offset, his maximum combined benefits would not exceed 80% of his highest year total earnings of approximately \$10,000.00. This would resolve itself to \$666.67 per month.

With 50% Offset

Comp Rate	80.00	110.00	131.00
	80.00	110.00	131.00
	-46.80	-46.80	-46.80
W.C. Benefits	33.20 per week	63.20 per week	84.20 per week
	143.87 per month	273.87 per month	346.87 per month
S.S. Benefits	405.60 per month	405.60 per month	405.60 per month
Total Benefit	549.47	679.47	770.47

Without Offset

Comp Rate	80.00	110.00	131.00
W.C. Benefits	466.67 per month	476.67 per month	567.67 per month
S.S. Benefits	200.00 per month	190.00 per month	99.00 per month
Total Benefit	666.67 per month	666.67 per month	666.67 per month
Offset Applied by Social Security	85.60	215.60	306.60

This 43 year old disabled person, with five dependents, was earning \$182.00 per week at the time of his injury. The benefits granted by the Social Security Administration were based on an average yearly creditable income of approximately \$5,300.00 per year. This disabled person and his family receive a total of \$482.40 per month, which resolves itself to \$106.70 per week, 50% of which equals \$53.35 per week, the amount of the Workmen's Compensation Division offset.

Without a Workmen's Compensation offset, his maximum combined benefits would not exceed 80% of his highest year total earnings of approximately \$10,500.00. This would resolve itself to \$700.00 per month.

		With Offset	
Comp Rate	80.00	110.00	131.00
	-53.35	-53.35	-53.35
	26.65 per week	56.65 per week	77.65 per week
W.C. Benefits	115.48 per month	245.48 per month	336.48 per month
S.S. Benefits	462.40 per month	462.40 per month	462.40 per month
Total Benefits	577.88 per month	707.88 per month	798.88 per month

		Without Offset	
Comp Rate	80.00	110.00	131.00
W.C. Benefits	346.67 per month	476.67 per month	567.67 per month
S.S. Benefits	353.33 per month	223.33 per month	132.33 per month
Total Benefits	700.00 per month	700.00 per month	700.00 per month
Offset Applied by Social Security	85.60	215.60	306.60

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 6, 1974

The meeting of the Labor and Employment Relations Committee was called to order in a special meeting by Chairman Siderius on the above date in Room 402 of the State Capitol Building at 6:30 p.m.

ROLL CALL: Seven members of the Committee were present with Senators Jensen and McNamer and Flynn excused, and Senator Bennett absent.

CONSIDERATION OF HOUSE BILL 1032: Tom Keegan, researcher for the committee presented some amendments worked out by the Department of Administration and the University professors following yesterday morning's meeting. He explained what the amendments would do. In short, they put the University System under the collective bargaining act of last year.

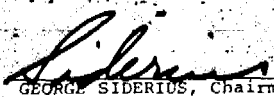
Senator Lowe moved the amendments be adopted, seconded by Senator Keenan. Amendments were adopted with Senators Bertsche and Moore voting no. Senators McNamer, Jensen and Flynn left their "Aye" votes for amendments to HB 1032.

Senator Lowe moved that HB 1032 AS SO AMENDED BE CONCURRED IN, seconded by Senator Keenan. MOTION CARRIED.

CONSIDERATION OF HOUSE BILL 1099: Mr. Zanto of the Workmen's Compensation Division was at the meeting to present some figures for the committee. Senator Lowe felt that this bill should be not concurred in.

Senator Keenan moved that HB 1099 BE CONCURRED IN, seconded by Senator Shea. MOTION CARRIED 6 to 4 with Senators Bertsche, Lowe, Moore and McNamer, voting no. Senators Flynn, McNamer and Jensen left "Aye" votes for HB 1099.

There being no further business the meeting adjourned at 7:15 p.m.


GEORGE SIDERIUS, Chairman

ROLL CALL

LABOR & EMPLOYMENT COMMITTEE

SECOND-HALF - 43rd LEGISLATIVE SESSION 1974

Date 3/6/74

NAME	PRESENT	ABSENT	EXCUSED
Jensen, Art			✓
Bertsche, Bill	✓		
Flynn, Elmer		✓	
Keenan, P.J.	✓		
Shea, Jimmy	✓		
Lennett, George		✓	
Himsel, Matt	✓		
Lowe, Bill	✓		
Moore, Jim	✓		
McNamer, William			✓
Siderius, George	✓		

This 43 year old disabled person, with five dependents, was earning \$162.00 per week at the time of his injury, which would entitle him to a compensation rate of \$108.01 per week. The benefits granted by the Social Security Administration were based on an average yearly creditable income of approximately \$5,300.00 per year. This disabled person and his family receive a total of \$462.40 per month, which resolves itself ~~to \$106.70 per week.~~

Without a Workmen's Compensation Offset, his maximum combined benefits would not exceed 80% of his highest year total earning of approximately \$4,500.00. This would resolve itself to \$700.00 per month.

	<u>100% Offset</u>	<u>50% Offset</u>	<u>No Offset</u>
Amt of Offset	108.01 <u>-106.70</u> 1.31	108.01 <u>-53.35</u> 54.66	108.01
W.C. Benefits	5.68 per month	236.86 per month	468.04 per month
S.S. Benefits	<u>462.40</u> per month	<u>462.40</u> per month	<u>231.96</u> per month
Total Benefit	468.08 per month	699.26 per month	700.00 per month

This 37 year old disabled person, with five dependents, was earning \$203.00 per week at the time of his injury, which would entitle him to a compensation rate of \$131.00. The benefits granted by the Social Security Administration were based on an average yearly creditable income of approximately \$6,000.00 per year. This disabled person and his family receive a total of \$405.60 per month, which resolves itself to \$93.60 per week.

Without a Workmen's Compensation offset, his maximum combined benefits would not exceed 80% of his highest year total earnings of approximately \$10,000.00. This would resolve itself to \$666.67 per month.

	<u>100% Offset</u>	<u>50% Offset</u>	<u>No Offset</u>
	131.00	131.00	131.00
Amt. of Offset	<u>-93.60</u>	<u>-46.80</u>	
	37.40	84.20	
W.C. Benefits	162.07 per month	346.87 per month	567.67 per month
S.S. Benefits	<u>405.60 per month</u>	<u>405.60 per month</u>	<u>99.00 per month</u>
Total Benefit	567.67	770.47 <i>724.97</i>	666.67

board, or the responsible political subdivision, or agents, surveyors, or other employees thereof, may make reasonable entry upon any lands and waters in the state for the purpose of making any investigation, survey, removal, or repair contemplated by this act. An investigation of any natural or artificial obstruction or nonconforming use shall be made by the board either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of any political subdivision."

Section 9. Section 89-3510, R.C.M. 1947, is amended to read as follows:

"89-3510. **Obstructions exempt where drainage area is small.** This act shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board."

Section 10. Section 89-3511, R.C.M. 1947, is amended to read as follows:

"89-3511. **Orders and rules — judicial remedy.** The board may issue such orders and rules as are necessary to implement the provisions of this act. If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under the provisions of section 89-3506 of this act for its removal or repair, such order shall not become effective less than (10) days after a hearing is held relating to such order. In addition to any requirement imposed by subsection (2) of section 89-3504 of this act, where any order is issued which affects with particularity the land adjacent to any watercourse or drainway, notice of the contents of such order and of any required hearing shall be mailed by the board to the titleholder of such land not less than ten (10) days before the effective date of such order, or, if there is a required hearing, to the titleholder of such land and to the owner of the artificial obstruction or nonconforming use not less than ten (10) days before the date of such hearing; provided, that such notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to subsection (2) of section 89-3508 of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board."

Section 11. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"89-3514. **Permit construed as added requirement—exception—immunity.** (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any

other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts in harmony with the purposes of this act permit issuance ordinances, regulations or resolutions and land-use ordinances, regulations or resolutions which meet or exceed the minimum standards of the board, and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing, and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply. The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

(2) No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act shall be brought against the state, the board, a member of the board, or its employees or agents. No provision of this act shall be construed as interfering in any way with the right of the United States to regulate interstate commerce or the navigable waters of the United States."

Section 12. This act is effective on its passage and approval.

Approved March 21, 1974

CHAPTER NO. 272

AN ACT AMENDING SECTIONS 92-702.1, AND 92-704.1, R.C.M. 1947, RELATING TO THE PAYMENT OF WORKMEN'S COMPENSATION BENEFITS FOR TOTAL PERMANENT DISABILITY, AND DEATH, BY ADJUSTING PROVISIONS ALLOWING WORKMEN'S COMPENSATION INSURERS TO REDUCE WORKMEN'S COMPENSATION PAYMENTS BY THE AMOUNT OF FEDERAL PERIODIC BENEFITS PAID TO A CLAIMANT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-702.1, R.C.M. 1947, is amended to read as follows:

"92-702.1. **Compensation for injuries producing total permanent disability.** Weekly compensation benefits for injury producing total permanent disability shall be sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the wages received at the time of the injury. The maximum weekly

compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero (0), by an amount equal, as nearly as practical, to one-half (½) the federal periodic benefits for such week.

Section 2. Section 92-704.1, R.C.M. 1947, is amended to read as follows:

"92-704.1. **Compensation for injury causing death.** Weekly compensation benefits for injury causing death shall be sixty-six and two-thirds percent (66 ⅔%) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in this act."

Approved March 22, 1974

CHAPTER NO. 273

AN ACT TO AMEND SECTION 32-21-105.1, R.C.M. 1947, PROVIDING A PENALTY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-21-105.1, R.C.M. 1947, is amended to read as follows:

"32-21-105.1. **Headgear required for motorcycle riders—noise suppression devices.** (1) The operator and passenger, if any, of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. Such headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation.

(3) A person convicted of the violation of subsection (1), above, shall be fined five dollars (\$5).

(4) A person convicted of the violation of subsection (2), above, shall

be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days or by both such fine and imprisonment for the first such conviction; for a second conviction within one (1) year thereafter such person shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or by both such fine and imprisonment."

Approved March 25, 1974

CHAPTER NO. 274

AN ACT DEFINING SHOPLIFTING AS THEFT; AMENDING SECTIONS 95-611 AND 11-1602, R.C.M. 1947, EXPANDING A CITIZEN'S RIGHT TO DETAIN AND ARREST OFFENDERS AND LIMITING CIVIL ACTIONS BASED ON SUCH DETENTIONS AND ARRESTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 95-611.1, R.C.M. 1947, which reads as follows:

95-611.1. **Definitions.** As used in this act:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment: concealing merchandise upon the person, or in a container, or otherwise removing such merchandise from full view while upon the premises; or removing, changing, or altering any price tag; or transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise.

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

Section 2. There is a new section to be numbered 95-611.2, R.C.M. 1947, which reads as follows:

95-611.2. **Concealment not proof of theft.** Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

Section 3. Section 95-611, R.C.M. 1947, is amended to read as follows: